

**To:** Andrews, Mary[Andrews.Mary@epa.gov]  
**Cc:** Lynch, Mary-Kay[Lynch.Mary-Kay@epa.gov]  
**From:** Carpien, Alan  
**Sent:** Mon 7/8/2013 4:46:31 PM  
**Subject:** AES and CAFO  
AES issues June 10 2013 6-27 comments.docx

I don't know the appropriate hierarchy on these, but in John's absence I thought it might be a good idea to at least let you guys know about these issues. Maybe we can just wait until John gets back.

I had sent the e-mail below to John just before he left regarding the possible Region 2 case in Puerto Rico on coal ash turned into road fill and the CAFO case regarding use of manure as fertilizer. In both cases, I thought that the Definition of Solid Waste issues were given short shrift. Both seemed to be treated more like the telephone pole case and the case involving pesticides on Army bases.

The Puerto Rico and CAFO cases differ from the other two because they involve recycling of secondary materials. Telephone poles and pesticide use involve products that were not recycled secondary materials but products that are used on the ground. Use of recycled coal ash and manure require a determination whether the secondary materials are wastes or products. When they remain on the ground for a long time, we then get into whether they are eventually abandoned – like lead bullets, wood preservatives that leach, pesticides or fertilizers that simply stay on the ground well after original use.

For AES we now have ORCR involved and they should get to the DSW issues. I don't know our plans for the CAFO case, in which we are not involved, but we should at least be cognizant of the recycling issues and their relation to the definition of solid waste.

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**From:** Carpien, Alan  
**Sent:** Friday, June 28, 2013 12:06 PM  
**To:** Michaud, John  
**Subject:** FW: Draft memo re AES issues

I don't know if you would want to discuss this matter, however, it seems to me that the Agency just ignores the efforts done on DSW and NHSM to decide how recycled material should be judged under the RCRA definition of solid waste.

This Region 2 case doesn't discuss the issues at all.

In addition, the CAFO case discussed yesterday was a great example of how to decide whether a recycled material becomes a solid waste, yet the discussion focused on the leaching from telephone poles. There is a distinct difference between material that is used in a particular way and remains on the ground – bullets, pesticides. These are not recycled materials. We dealt with manure in the NHSM, although in the combustion context, but NACWA has been complaining about how use of sludge as fertilizer could be affected.

I realize that there may be an issue with fertilizer and pesticides that have been on the ground for a while. However, the initial recycling of secondary materials to be turned into a useful product – fertilizer – presents other issues. Indeed, the Safe Food case, in which secondary materials were turned into fertilizer was not even mentioned in any discussions I heard about the CAFO cases.

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**From:** Carpien, Alan

**Sent:** Friday, June 28, 2013 11:50 AM

**To:** Andrews, Mary; Lewis, Jen; Salo, Earl; Celeste, Laurel; Stachowiak, Robert

**Subject:** RE: Draft memo re AES issues

Definition of solid waste should focus on the EPA rules that have dealt with the court cases – DSW and NHSM. Those rules at least set up an Agency framework for deciding whether recycled materials are wastes. The analysis here does examine whether the material is a commodity and whether it serves a useful purpose. There is no particular discussion of the contaminant levels so as to indicate either a “toxics along for the ride” analysis or an analysis that there are substantial constituents that serve no useful purpose but are simply in the material to assist in their disposal. I have comments largely on organization. However, there could be a better introduction to the DSW issue more along the lines of our rules.

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**From:** Andrews, Mary

**Sent:** Wednesday, June 12, 2013 3:22 PM

**To:** Lewis, Jen; Salo, Earl; Celeste, Laurel; Stachowiak, Robert; Carpien, Alan

**Subject:** FW: Draft memo re AES issues

The attached 22 page memo discusses use of 7003 or 106 to address coal ash used for roadbed and fill projects in PR. On a quick reading, I'm not at all sure they are properly analyzing the elements of an action under 7003 but there are also issues of beneficial reuse and CERCLA "disposal." Another question is whether there's a potential research project here for our clerk.

Mary Andrews

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**From:** Saenz, Diana

**Sent:** Tuesday, June 11, 2013 5:01 PM

**To:** Andrews, Mary

**Subject:** FW: Draft memo re AES issues

Mary – Here is a legal memo from R2 on issues with the AES/Agremax coal ash. Please review – we would like to discuss with you.

Thanks

Diana

Diana J. Saenz, Chief

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**From:** Kelley, Rosemarie  
**Sent:** Monday, June 10, 2013 5:43 PM  
**To:** Saenz, Diana  
**Cc:** Schefski, Kenneth  
**Subject:** FW: Draft memo re AES issues

fyi

Regards,

**Rosemarie A. Kelley**, Director

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**From:** Simon, Paul  
**Sent:** Monday, June 10, 2013 5:41 PM  
**To:** Kelley, Rosemarie  
**Cc:** Raack, Pete; Nurkin, Gary; Sawyer, William; Schaaf, Eric; LaPosta, Dore; Durack, Patrick; Voo, Leonard; Grossman, Lenny  
**Subject:** Draft memo re AES issues

Rosemarie – here is the draft legal memo that I was referring to when we spoke earlier today. Pls. give me a shout when you are ready to discuss it or if you have any questions. I'm also sending it to OSRE (Ken Patterson) and OGC-SWERLO (John Michaud). Eric is reviewing it as well.

Thanks.

Paul Simon

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